

United States v. Gerber, [999 F.2d 1112 \(7th Cir. 1993\)](#), *cert. denied*, [510 U.S. 1071 \(1994\)](#).

Location: Indiana – Indian burial mound on private land

Applicable Law: [Archaeological Resources Protection Act](#) (ARPA) ([16 U.S.C. §§ 470aa et seq.](#))

Where Law Applies: *Archaeological Resources Protection Act*: Application is generally limited to archaeological resources on public lands (owned and administered by the United States) and Indian lands, not including lands on the outer continental shelf.

However, ARPA section 6(c) serves as a catch-all to back up state and local laws protecting archaeological resources *wherever* they are located. It states that “no person may sell, purchase, exchange, in interstate or foreign commerce, any archaeological resource excavate, removed, sold, purchased, exchanged, transported, or received in violation of any provision rule, regulation, ordinance, or permit in effect under State or local law.” Enforcement of ARPA occurs within the U.S.; the law can be enforced seaward to the U.S. 24 nm contiguous zone.

Holding: Enforcement of the prohibition against illegal trafficking in interstate or foreign commerce under ARPA section 6(c) was upheld even though the archaeological resource was taken from private land as opposed to ARPA’s general application to public lands and Indian lands. Gerber violated ARPA section 6(c) when he removed artifacts from private land in violation of Indiana’s trespass and conversion laws and subsequently transported those artifacts in interstate commerce.

General Facts:

In 1989, Arthur Gerber purchased, from an acquaintance named Bill Way, several Native American artifacts and information about where those artifacts were discovered. Way, an employee of General Electric, had discovered a Hopewell Indian burial mound while working on General Electric property in southwestern Indiana. After being shown the location of the mound, Gerber returned to the site several times and proceeded to remove hundreds of artifacts from the mound. On his last visit to the site, a General Electric security guard discovered Gerber digging on General Electric’s private property and forced Gerber to leave. After being ejected from the site, Gerber sold several of the artifacts at an Indian relic trade show in Kentucky.

Procedural Posture:

The United States District Court for the Southern District of Indiana found Gerber guilty of violating ARPA section 6(c). Gerber appealed and, in 1993, the United States Court of Appeals for the Seventh Circuit affirmed Gerber’s conviction. (16 U.S.C. § 470ee(c) (2011)).

Court Holding and Reasoning:

At the district court level, Gerber pleaded guilty to violating ARPA section 6(c) but reserved his right to appeal, arguing that ARPA was inapplicable to archaeological objects removed from private land. On appeal, Gerber argued that the two other related ARPA sections, 6(a) and 6(b), are limited in application to lands owned by the federal government or Indian tribes and that “[t]he omission of any reference in subsection (c) to federal and Indian lands was . . . inadvertent.” Additionally, the legislative history and preamble of the Act showed “that all that Congress was concerned with was protecting archaeological sites and objects on federal and Indian lands.” Judge Posner and the U.S. Court of Appeals for the Seventh Circuit were not persuaded by Gerber’s arguments and instead found that section 6(c) was included as a catchall provision to assist the States in protecting archaeological sites no matter where those sites were located. Had Congress intended section 6(c) to be limited to public lands and Indian lands, Congress would have included that limiting language. The court also noted that “[t]he reference to interstate commerce [in ARPA section 6(c)] would be superfluous if the subsection were limited to artifacts taken from federal or Indian lands” because the removal of artifacts from federal or Indian lands would itself trigger federal jurisdiction; thus, there would be no need to also show that the artifacts had been transported in interstate commerce. Therefore, the court held that ARPA section 6(c) is not limited in application to public lands and Indian lands.

Gerber also argued that ARPA section 6(c) is limited to artifacts removed in violation of only those state and local laws that are explicitly concerned with the protection of archaeological resources. Although the court agreed with Gerber that ARPA section 6(c) should not apply to all state and local laws, the court found that applicable state and local laws are not limited to those that specifically protect archaeological resources. Broader state and local laws, such as Indiana’s trespass and conversion laws, that result in the protection of archaeological resources are also applicable. Therefore, Gerber’s violation of Indiana’s trespass and conversion laws triggered ARPA section 6(c)’s state or local law requirement. Because Gerber then sold in interstate commerce several of the artifacts he had removed from General Electric’s private property, the court affirmed Gerber’s conviction.